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Attorneys for Defendants PennyMac

Mortgage Investment Trust and PNMAC

Capital Management, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERTO VERTHELYI, on behalf
of himself and all others similarly
situated,

Plaintiff,

v.

PENNYMAC MORTGAGE
INVESTMENT TRUST; PNMAC
CAPITAL MANAGEMENT, LLC,

Defendants.

Case No. 2:24-cv-05028-MWF

**DEFENDANT PNMAC CAPITAL
MANAGEMENT LLC'S NOTICE
OF MOTION AND MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT**

Hearing Date: November 18, 2024

Time: 10:00 a.m.

Place: Courtroom 5A

Judge: Michael W. Fitzgerald

**TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on November 18, 2024, at 10:00 a.m., or such other date ordered by the Court, in Courtroom 5A of this Court, located at First Street Courthouse, 350 W. First Street, Los Angeles, California, Defendant PNMAC Capital Management, LLC (“PCM”) will and hereby does move the Court for an order dismissing Plaintiff’s Complaint and each claim therein without leave to amend.

This Motion is made pursuant to Federal Rules of Civil Procedure 12(b)(6) on the grounds that the Complaint fails to state a claim. PCM’s Motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the accompanying Request for Judicial Notice, any reply memorandum, the pleadings and filings in this action, and such other matters as may be presented at or before the hearing. PCM respectfully requests oral argument on this Motion.

This Motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on August 13, 2024.

Dated: August 20, 2024

Respectfully submitted,

/s/ Matthew Donald Umhofer

UMHOFER, MITCHELL & KING, LLP
Matthew Donald Umhofer
Jonas P. Mann

*Attorneys for Defendants PennyMac
Mortgage Investment Trust and PNMAC
Capital Management, LLC*

1 Defendant PNMAC Capital Management, LLC (“PCM”) joins in Defendant
2 PennyMac Mortgage Investment Trust’s (“PennyMac”) motion to dismiss and moves to
3 dismiss on one additional ground, that Plaintiff Roberto Verthelyi’s Complaint fails to
4 state a claim against PCM because it does not plausibly allege that PCM itself engaged
5 in any wrongdoing. The arguments set forth in PennyMac’s motion are incorporated
6 here by reference, and fully support the dismissal of all claims against PCM.

7 Beyond the arguments set forth in PennyMac’s motion lies another fatal flaw: the
8 Complaint makes no specific allegations about PCM’s conduct at all. A plaintiff “must
9 give the defendants a clear statement about what the defendants did wrong”—“grouping
10 defendants together without identifying what the particular defendants specifically did
11 wrong” is improper. Sollberger v. Wachovia Sec., LLC, No. SACV 09-0766, 2010 WL
12 2674456, at *4 (C.D. Cal. June 30, 2010); Fed. R. Civ. P. 8(a). To comply with Rule
13 8(a)(2), “a ‘plaintiff suing multiple defendants ‘must allege the basis of his claims
14 against each defendant[.]’” Tamraz v. Bakotic Pathology Assocs., LLC, Case No. 22-
15 cv-0725, 2022 WL 16985001, at *2 (S.D. Cal. Nov. 16, 2022) (quoting Altman v. PNC
16 Mortg., 850 F. Supp. 2d 1057, 1067–68 (E.D. Cal. 2012)).

17 Plaintiff’s Complaint fails that test, grouping Defendants PennyMac Mortgage
18 Investment Trust and PNMAC Capital Management, LLC, together as “PennyMac,”
19 (*see* Compl. at 1) and failing to allege any facts supporting the inference that **PCM**
20 violated the UCL.

21 Plaintiff contends that the terms of the Articles Supplementary, read pursuant to
22 the LIBOR Act, require that *PennyMac Mortgage Investment Trust* issue dividends at a
23 different rate. But the Complaint does not allege that PCM issues shares or dividends,
24 and PCM is not a party to the Articles Supplementary. (*See* Declaration of Matthew
25 Donald Umhofer in Support of Defendants’ Request for Judicial Notice Ex. A, at 1; Ex.
26 B, at 1.) The Complaint fails to allege any other basis for liability, let alone that any
27 actions by PCM in particular were unlawful or unfair under the UCL.

1 Accordingly, the claim against PCM should be dismissed. See Yagman v.
2 Wunderlich, Case No. 21-cv-06093, 2021 WL 5707166, at *2 (C.D. Cal. Nov. 22, 2021),
3 *aff'd*, No. 21-56277, 2022 WL 2800816 (9th Cir. 2022).
4

5 Dated: August 20, 2024

Respectfully submitted,

6 /s/ Matthew Donald Umhofer

7 UMHOFFER, MITCHELL & KING, LLP

8 Matthew Donald Umhofer

Jonas P. Mann

9 *Attorneys for Defendants PennyMac*

Mortgage Investment Trust and PNMAC

Capital Management, LLC
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